Supreme Court, U. S.
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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1977

No. 77-883

MICHAEL DAPPOLONIA,

Appellant,

vs.

BOARD OF CHIROPRACTIC EXAMINERS
OF THE STATE OF FLORIDA

Appellees.

APPEAL FROM THE FOURTH DISTRICT
COURT OF APPEAL OF THE STATE
OF FLORIDA

JURISDICTIONAL STATEMENT

J. MICHAEL CARTER
P.O. 566
Crawfordville, Fl. 32327
Counsel of Record for Appellant

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Appellees.

JURISDICTIONAL STATEMENT

Pursuant to Rules 13(2) and 15 of The Supreme Court of the United States, appellant, Michael Dappolonia, files this Statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the decision entered by the Fourth District Court of Appeal of the State of Florida in this case and should exercise such jurisdiction herein.

OPINIONS BELOW

The decision of the Fourth District Court of Appeal of the State of Florida appears in 346 So.2d 656 and is included herein as Appendix C, pp 34. This decision was a per curiam denial without a written opinion, denying Appellant's Writ of Certiorari which sought to quash the Final Order of the Board of Chiropractic Examiners of the State of Florida revoking Dr. Michael Dappolonia's Chiropractors license. The Final Order is included herein as Appendix A, pp 14. The Recommended Order proposed to the Hearing Officer for the Board of Chiropractic Examiners by Dr. Michael Dappolonia is included herein as Appendix B, pp. 23.

The decision of the Florida Supreme Court appears in So.2d and is included herein as Appendix D, pp. 35. This decision was also a per curiam denial without written opinion, denying Appellant's Writ of Certiorari.

GROUNDS OF JURISDICTION OF SUPREME COURT

This appeal arises from an action to revoke Dr. Michael Dappolonia's license No.865 to practice Chiropractic Medicine in the State of Florida. On September 2, 1975, the Board of Chiropractic Examiners of the State of Florida filed an Administrative Complaint against Dr. Dappolonia and a formal hearing was held on January 26, 1976 before a Hearing Officer assigned by the Division of Administrative Hearings of the Department of Administration of the State of Florida. On February 16, 1976, Dr. Michael Dappolonia, through counsel, filed a Proposed Recommended Order. The Hearing Officer issued a Recommended Order on April 16, 1976, which recommended that

Dr. Dappolonia's license be revoked. On Thursday, July 15, 1976, the Board of Chiropractic Examiners of the State of Florida met in official session and voted to adopt the Recommended Order of the Hearing Officer as its Final Order and revoked Dr. Michael Dappolonia's license to practice the profession of Chiropractic in the State of Florida.

On August 16, 1976, Dr. Dappolonia filed with the Fourth District Court of Appeal of the State of Florida a Petition for Writ of Certiorari to the Board of Chiropractic Examiners requesting that the Court grant the Writ and enter an order quashing the Final Order of the Board. The District Court rendered a per curiam decision denying the Petition for Writ of Certiorari on April 7, 1977, and on May 22, 1977, denied a Petition of Rehearing.

On June 9, 1977. Dr. Michael Dappolonia filed with the Florida Supreme Court a Petition for Writ of Certiorari to the Fourth District Court of Appeal of the State of Florida which was denied September 23, 1977. A timely Notice of Appeal was filed October 21, 1977, in the United States Supreme Court. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Section 1257 (2)

Cases that sustain the jurisdiction of this Court include;

American Sugar Refining Co. v. Louisiana, 179 U.S. 89 (1900)
Arrowsmith v. Harmoning, 118 U.S. 194 (1885)
Compare Stadelman v. Miner, 246 U.S. 544 (1918)
Curran v. Laird, 420 F.2d 122 (1969)
Fiske v. Kansas, 274 U.S. 380 (1927)
Fox River Paper Co. v. Railroad Commission, 274 U.S. 651 (1927)
Grand River Dam Authority v. Grand-Hydro, 335 U.S. 356 (1948)
Honeyman v. Hanan, 300 U.S. 14 (1937)
Hughes Air Corporation v. C.A.B., 482 F.2d 143 (9th Cir. 1973)

Lorell v. Griffen, 303 U.S. 444 (1938)
Martin v. Hunter's Lessee, 1 Wheaton 304 (1813)
Overton Park Inc. v. Volpe, 401 U.S. 402 (1971)

QUESTION PRESENTED

Whether Dr. Michael Dappolonia was deprived of his Chiropractor's license without due process and equal protection of the law guaranteed by the 14th Amendment to the United State Constitution.

STATEMENT OF THE CASE

The facts of the case underlying the appeal are as follows: Dr. Michael Dappolonia was licensed both as a Chiropractor, license no. 865, and as a Naturopath, license no. 548. During 1975, Dr. Dappolonia treated Suzzanne Carter for fainting spells using a diagnostic instrument known as a biometer.

On September 2, 1975, the Board of Chiropactic Examiners filed an administrative complaint charging Dr. Dappolonia with treating a patient by the use of a diagnostic instrument not taught in the regular course of instruction in a college recognized by the Board of Chiropractic Examiners, and with prescribing medication consisting of celoids, both acts constituting fraud and deception in the practice of Chiropractic.

On January 26, 1976, a formal hearing was conducted by a Hearing Officer assigned by the Florida Division of Administrative Hearings. After the hearing, Dr. Dappolonia's attorney filed a Recommended Order (Appendix B).

On April 16, 1976, the Hearing Officer issued a Recommended Order deciding that Dr. Dappolonia was not guilty of prescribing medication as a Naturopath; but as a Chiropractor was guilty of using a diagnostic instrument not taught in regular course of instruction in a college recognized by the Board of Chiropractic Examiners, and recommended that his Chiropractor's license be revoked.

On Thursday, July 15, 1976 at Orlando City Hall, 400 South Orange Avenue, Orlando, Florida, the Board of Chiropractic Examiners met in official session to take action on the Hearing Officer's Recommended Order. The Board failed to provide Dr. Dappolonia or his attorney with any notice of this meeting and by luck his attorney learned of this meeting on the day it was being held by way of a local newspaper article. Dr. Dappolonia's attorney got a court reporter and went to the meeting, but before allowing his attorney to address the Board at the meeting, the Board voted to not delay the proceedings so as to allow counsel an opportunity to prepare and appear before the Board concerning the action on the Recommended Order. Only after this vote was taken, was counsel permitted to formally request that the proceedings be continued until the next regularly scheduled meeting, at which time counsel would be prepared to present oral arguments to the Board concerning the Board's action on the Recommended Order. The Board denied Dr. Dappolonia's attorney's request and voted to adopt the Recommended Order of the Hearing Officer.

Dr. Dappolonia petitioned the Fourth District Court of Appeal for a Writ of Certiorari to quash the Final Order adopted by the Board stating on page 6 of his petition that "The Order of the Respondent Board revoking the Petitioner's license to practice the profession of Chiropractic in the State of Florida departed from the essential requirements of law", and listed among those departures that," They did not allow Petitioner's legal counsel to present oral arguments" and that "There are no findings of fact that the Petitioner was acting as a chiropractor when using the diagnostic instrument". After being denied the requested Writ in the Fourth

District Court of Appeals, Dr. Dappolonia appealed to the Florida Supreme Court on a Petiton for Writ of Certiorari to review the denial by the Fourth District Court of Appeal and he attached his earlier Petition for Writ of Certiorari to the Board, which brought the aforementioned departures from the essential requirements of law before the Florida Supreme Court. The Florida Supreme Court denied certiorari; in the same manner as the Fourth District Court of Appeal , a per curiam decision without a written opinion.

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents important and substantial federal questions, as hereinafter described, in that, the Hearing Officer's decision adopted by the Board was arbitrary and capricious in finding that Dr. Dappolonia was a Chiropractor when using the diagnostic instrument and not a Chiropractor when prescribing medication; when in fact, both acts are legal as a licensed Naturopath under Florida Statutes, Chapter 460 which pertains to Chiropractors, in particular Section 460.24 which reads as follows:

> "460.24 CHAPTER NOT APPLICABLE TO OTHER HEALING PRACTICES. --nothing in this chapter shall be construed to apply to or in any manner interfere with any other method or science of healing in this state, the person practicing such other method or science of healing having been heretofore licensed to do practice under any law of this state."

This arbitrary and capricious finding that Dr. Dappolonia was a Chiropractor in one instance and a Naturopath in another when the alleged fraudulent acts occurred simultaneously was a denial of equal protection under the law; and if left unrectified, would mean

that every Florida citizen holding dual licenses, one of which was Chiropractic, could lose his Chiropractor s license by doing acts totally lawful and within his other licensed profession. The Hearing Officer decided that prescribing medication, which is outside Chiropractic, was lawful, but that using a biometer which is outside Chiropractic was not - a more arbitrary and capricious finding without any logic could scarcely be imagined.

Nothing in Florida law mandates that a citizen holding dual licenses must inform the patient that, "now I'm acting in this capacity and now I'm acting in my other discipline". It is ludicrious to think the law would demand such disclosure where the law provides for dual licensing, but that is specifically what the Hearing Officer's Recommended Order adopted by the Board would require. For this reason a Substantial Federal Question arises to protect all-dual licensed Florida citizens from such an illogical and arbitrary result.

Further, a Substantial Federal Question arises, in that, the Board adopted the Hearing Officer's Recommended Order without giving notice of the intended action on the order to the party adversely affected; and when luckily learning of the intended action, denying the adversely affected partys' counsel an opportunity to orally argue against the Board's decision of whether to adopt the Recommended Order or not. This was a fundamental denial of due process and raises a Substantial Federal Question.

Analyzing cases which support Appellant's contention of jurisdiction leads foremost to Curran v. Laird, 420 F.2d 122 (1969) where in the court held that there is a "general rule that official administrative action is reviewable in courts when a person claims injury from an act taken by a government official in excess of his powers". The Hearing Officer's powers must and are limited to following the

law which provides that Dr. Dappalonia may do the alleged fraudulent acts as a Naturopath without any requirement that he disclose that he is not acting as a Chiropactor.

The Ninth Circuit Court of Appeals in Hughes Air Corporation v. CAB, 482 F.2d 143 (1973) concerned itself with an adminsitrative action and said, the "Court may set aside administrative agency action which is arbitrary or abuse of discretion if court is of opinion that action was clearly wrong." The Appellant here contends that this is such a case and that the opinions below from the Board's action on the Recommended Order to the Fourth District Court of Appeal to the Florida Supreme Court has been nothing more than a rubber stamp approval of an arbitrary and capricious finding of the Hearing Officer. In Smith and Solomon Trucking Co. v. US, 255 F. Supp 243 the court said the "Court may not give rubber stamp approval to administrative agency's findings that are arbitrary or not supported by substantial evidence." The United States Court of Appeals District of Columbia in F. T. C. v. Crowther, 430 F.2d 510 at 514 said, the "Court must be alert to agency action which is arbitrary or capricious and take note of those situations where it has not adequately explained its departure from prior norms and has not sufficiently spelled out legal basis of its decisions".

Before the Supreme Court takes jurisdiction of a case a property interest must be affected and Dr. Dappolonia's Chiropractor's license is such a property. In 88 Har. L. Rev. 1667 (1975) on page 719-720 in an article entitled "Reformation of Administrative Law" the writer cited the Arnett and Goss cases, respectively Arnett v. Kennedy, 416 U.S. 134 (1974) and Goss v. Lopez, 93 S.CT. (1975) and said that "Arnett and Goss seem to establish that whenever a person is entitled to challenge official conduct as contrary to statute, he is possessed of a constitutionally protected

"property" interest." Certainly a license to a profession is sufficiently imbued with a property interest.

Futhermore under Florida law and elsewhere, the revocation of a person's license to his livelihood demands close scrutiny. In Florida the case of Buchman v. State Board of Accountancy, 300 So3d 671 (1974) held that "Statutes permitting revocation of occupational licenses are penal in nature.", and on page 673 of this same decision followed this statement and citing from another case said "...The rule is that, where Statutes of this kind are invoked, the provisions of the Statutes must be strictly followed, because the Statute, as hereinbefore stated is penal in it nature.". Further on in this decision on page 674, the court reinforced this proposition of law saying, "Earlier we stated that when rights of life, liberty or property are materially affected by the exercise of official administration discretion, due process of law must be offered to the proceedings." Also see Smith v. Department of Registration and Education, 412 III 332, 106 NE2d 722 as typical statements of law in that"so serious a proceeding as to revoke the license of a doctor, due process requires a definite charge, adequate notice, and a full, fair, and impartial hearing."

Jurisdiction cannot be denied because the Chiropractor's license is shrouded in State law. In Fox River Paper Co. v. Railroad Commission, 274 U.S. 651 (1927) the court held that "the jurisdiction of the Supreme Court of the United States is not affected because the existence of the right for which constitutional protection is claimed depends upon state law." Granted Dr. Dappolonia's Chiropractor's license is a privilege under state law, but once the state legislature extends the privilege, which was extended to practice Chiropractic simultaneously with other disciplines, and did not impose disclosures of what discipline of healing was being administered at each

step of the patient's care, a Hearing Officer cannot come along later and arbitrarily decide to impose such limitations. As old as the case of Martin v. Hunter's Lessee, 1 Wheaton 304 (1813), appellate jurisdiction of the Supreme Court has extended to a final judgment in any suit in the highest court of a state wherein is drawn in question the validity of an authority exercised by any state which is alleged as repugnant to the Constitution. The Hearing Officer's actions adopted by the Board and upheld by the Fourth District Court of Appeal and Supreme Court of the State of Florida is such a final suit. The established scope of review has been to limit certiorari to determine whether procedural due process had been accorded the party by the agency, whether the agency charges were supported by substantial competent evidence and whether essential elements of law had been observed by the agency. The charge is of an unconstitutional exercise of authority under a law which is valid.

Jurisdiction to review the decision of the Fourth District Court of Appeal of Florida is explicated in the questions asserted to that court and later presented to the Florida Supreme Court. The decision of these courts while per curiam denials without written opinion still convey jurisdiction because as stated in Williams v. Kaiser, 323 U.S. 471 (1945), "review by the Supreme Court of a judgment of a state court requires that it appear from the record, affirmatively or by fair implication, that a decision as to the federal question was necessary to the state court's determination of the cause.", "A federal question involved in a case in a state court will be deemed to have been passed upon, either necessarily or hypothetically, by the state court where that court's discussion of the question is relevant only upon the assumption that its decision of the question of state law involved in the case was such as to give occasion to consider the federal question,", as stated in Herb v. Peteairn,

324 U.S. 117 (1945) and finally as stated in Grand River Dam Authority v. Grand-Hydro, 335 U.S. 359 (1948) the court said "... the fact that a state court purports to rest its decision on state law does not eliminate the duty of the Supreme Court to consider a federal question, properly raised and presented, which is necessarily, although impliedly, adjudicated by the state court."

CONCLUSION

For the reasons stated above, appellant submits that this appeal brings before the Court substantial and important federal questions which require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Dated December 19, 1977.

Respectfully submitted,

J. Michael Carter
Attorney for Appellant

NOTICE

TO: Robert Shevin, Florida Attorney General and Charles J. Ruberg, Assistant Attorney General

You are hereby notified that on the 19th day of December, 1977, the Appellant, Michael Dappolonia, by and through the undersigned attorney, filed in the Supreme Court of the United States the foregoing Jurisdictional Statement. Three copies of said Jurisdictional Statement are herewith served upon you.
Dated December 19, 1977.

J. Michael Carter
Attorney for Appellant
P.O. Box 566
Crawfordville, Fl. 32327

CERTIFICATE OF SERVICE

I, J. Michael Carter, a member of the Bar of the Supreme Court of the United States, and of counsel for the Appellant herein, hereby certify that I have this day served three (3) printed copies of the foregoing Jurisdictional Statement and appendices thereto on the Appellee herein, by depositing same in a United States Post Office with first class postage prepaid addressed to counsel of record for the Appellee, as follows: Robert Shevin, Florida Attorney General and Charles S. Ruberg, Assistant Attorney General, Department of Legal Affairs, Office of Attorney General, the Capital, Tallahassee, Florida, 32304, this 19th day of December, 1977.

J. Michael Carter

Appendix A

STATE OF FLORIDA, DIVISION OF PROFESSIONS, DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION, BOARD OF CHIROPRACTIC EXAMINERS.

In Re: The revocation or suspension of the license of Michael Dappolonia, D.C., License No. 865

Case No. 75-1642

FINAL ORDER

THIS CAUSE came on to be heard in a formal proceeding pursuant to §120.57(1), F.S., after due notice to the parties at Winter Park, Florida, on January 26, 1976, before K. N. Ayers, Division of Adminsitrative Hearings. By Administrative Complaint the Respondent was charged with treating a patient by the use of a diagnostic instrument not taught in the regular course of instruction in a college recognized by the Board of Chiropractic Examiners, which constitutes fraud and deception in the practice of chiropractic. The Respondent was also charged with prescribing medication consisting of Celoids, which also constituted fraud and deception in the practice of chiropractic.

The Florida State Board of Chiropractic Examiners hereby adopts in toto, the Recommended Order of the hearing officer issued on April 16, 1976, a copy of which is attached as Exhibit A.

THEREFORE, it is hereby ORDERED AND ADJUDGED that the Respondent's license is hereby revoked and his right to practice the profession of Chiropractic in the State of Florida is terminated.

DONE AND ORDERED this 15th day of July,

1976, in Orlando, Florida.

s/ J. K. Hendricks, DC
President,
Florida State Board of
Chiropractic Examiners

s/ Paul Vogel DC
Secretary-Treasurer
Florida State Board of
Chiropractic Examiners

cc: All Parties

I hereby attest that this is a true and correct copy of this order filed this 15th day of July, 1976 with the Secretary of State.

s/ C. A. Hartley
C. A. Hartley, Coordinator
Florida State Board of Chiropractic
Examiners

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: The revocation or suspension of the license of Michael Dappolonia, D.C., License No. 865

CASE NO. 75-1642

Pursuant to notice, the Division of Administrative Hearings, by its duly designated hearing officer, K. N. Ayers, held a public hearing in the above styled cause on January 26, 1976 at Winter Park, Florida.

APPEARANCES:

Ronald LaFace, Esquire, P.O. Box 1752, Tallahassee, Florida 32302, representing the State Board of Chiropractic Examiners

John W. Bowen and Julius G. Petruska, ROWLAND, PETRUSKA, BOWEN, and McDONALD, P.O. Box 305, Orlando, Florida, 32802, representing Michael Dappolonia.

RECOMMENDED ORDER

By Administrative Complaint filed September 2, 1975 the Florida State Board of Chiropractic Examiners seeks to revoke, annul, withdraw, or suspend the license of Michael Dappolonia, D.C., who holds License No. 865, upon the allegations that he treated a patient by use of a diagnostic instrument not taught in the regular course of instruction in a college recognized by the Board of Chiropractic Examiners; that he prescribed medication consisting of Celoids; and that by using the diagnostic instrument, which was incapable of doing what he represented it could do, licensee was guilty of fraud and deception in the practice of chiropractic. Further, it was alleged that in prescribing

the pills the licensee was guilty of fraud and deception. The Board presented 5 witnesses and the licensee three witnesses, including himself and his wife.

FINDINGS OF FACT

Mrs. Carol Ann Carter's daughter, Suzanne, had passed out at school a few times and, when routine medical checks failed to disclose the specific cause, Mrs. Carter thought a pinched nerve might be the problem. She took Suzanne to Dr. Dappolonia, a chiropractor, whose name was suggested by a friend. Medical doctors had indicated more drastic tests would be required to ascertain the cause of the problem and, before embarking on those tests, Mrs. Carter decided to try the services of a chiropractor.

On her first visit Dr. Dappolonia took x-rays of the patient and explained to Mrs. Carter that he could diagnose Suzanne's problems with his biometer machine. Mrs. Carter expressed her skepticism to Dr. Dappolonia when he advised her that the machine could diagnose the condition of all body organs. When she told him she didn't want to be ripped off he assured her that the machine was all he claimed it to be. When Dr. Dappolonia examined Suzanne by use of the biometer he advised her and Mrs. Carter that she had five hundred million units of infection in her nervous system and prescribed pills to be taken at frequent intervals - initially 5 every 15 minutes for one hour then 5 per hour. He further advised that these pills were unique in that if touched by human hands they would be neutralized and would not be effective therafter. When told this Mrs. Carter again expressed her skepticism, but Dr. Dappolonia assured her that the treatment and medication would cure her daughter's malady. During the course of these treatments Dr. Dappolonia told Suzanne and Mrs. Carter that it was necessary to believe in the machine and the pills in order for them to work.

Suzanne received some seven or eight treatments from Dr. Dappolonia which consisted of checks by use of the biometer and continuation of the Celoid pills. On the last visit Mrs. Carter was advised that Suzanne was now suffering from insecticide poisoning and that a different Celoid pill would be needed. He prescribed for her some of these pills.

Mrs. Carter took these pills to her family doctor, Dr. Miller, who sent them to a laboratory for analysis. The pills contained none of the ingredients normally found in medcines and were physically similar to certain sugar pills carried in pharmacies for use as placebos. Chemical tests conducted showed the pills consisted principally of dissacherides, either lactose or maltose, and contained no ingredient normally used to combat insecticide poisoning. Dr. Miller was advised of the results of the laboratory tests.

During the various visits Suzanne made to Dr. Dappolonia the biometer was used on each visit. Suzanne and Mrs. Carter described the machine as having the outward appearance of an old radio with several knobs which could be turned but no meters or recording devices which had needle or stylus that moved. A black 4" x 4" x 1/3" black plate with two wires attached would be placed on the body and Dr. Dappolonia, with his fingers on the plate, would turn dials on the machine and thereafter announce the amount of infection in the organ.

Dr. Gary Miller has treated Suzanne Carter off and on since 1973 as the family doctor. In January, 1975 she was examined by him following a syncopal episode (fainting). This examination revealed no physical adnormality that would account for the episode. She was advised to keep a running record of these episodes if they occurred.

Dr. Miller saw Suzanne in February, 1975 with no reported recurrence of syncopal episodes. He saw her again in May, 1975 when

several intervening episodes were reported. At this time he conducted an electroencephalogram which was normal. Suzanne was next seen on June 3, 1975 for pain in her right elbow which had been bruised in a fall. At this time Mrs. Carter asked him to have pills analyzed and to check Suzanne for insecticide poisoning. He saw no symptoms of such poisoning and suspected that the pills were placebos. When he received the report from the laboratory that the pills were composed of dissacherides he considered his suspicisions confirmed. In any event the pills would have had no therapeutic value in treating insecticide poisoning.

Dr. Miller has had special training in several fields of medicine including internal medicine, is unaware of any machine that can measure infection, and he has never heard of a machine as described by Suzanne and her mother used in any field of medicine.

Homer S. Stallings, D. C. is a licensed chiropractor and former member of the Board of Chiropractic Examiners. As such he is generally familiar with the curriculum and the schools that are approved by the Florida Board of Chiropractic Examiners that will qualify a graduate to be admitted to practice in Florida. He is aware of none that teach the use of any particular instrument to diagnose infections. Chiropractors cannot prescribe medications; however, naturopaths are permitted to do so.

At the completion of the Board's case Respondent's motion for directed verdict on grounds that evidence failed to show the treatment given by licensee was done in chiropractic practice and to strike all testimony respecting the biometer, was denied.

Exhibit 1, a photocopy of Dr. Dappolonia's license as a naturopathic physician was admitted into evidence without objection.

J. L Alexander, D.C., N.D. has been a licensed naturopath in Florida since 1950 and a licensed chiropractor since 1952. He did not renew his chiropractic license in 1975 and is now practicing only naturopathy. He operated a diagnostic machine similar to the one used by Dr. Dappolonia in Kentucky before he came to Florida in 1950. He knows the instrument as as a radioclast or hemoclast and used a radioclast in giving phsiotherapy in Kentuky. Dr. Alexander described the radioclast as an electrical instrument used to measure vitality by picking up vibrations from vibrations from vorious organs. He used placebos but only to test the truth of a patient's systoms. Dr. Alexander is aware of no school that teaches the use of the radioclast.

Mrs. Dappolonia presented receipts of payments made by Mrs. Carter as Composite Exhibit 3. On the top thereof appears (less address) NA PIER CLINIC
CHIROPRACTIC AND MEDICAL NATUROPATHY

A photograph of the front of Dr. Dappolonias office was admitted into evidence as Exhibit 2. Thereon, following the name M. Dappolonia, appears D.C., N.D.

Dr. Dappolonia is licensed in Florida as a chiropractor and naturopath. He considered his presecription of pills for Suzanne Carter to be authorized under his license as a naturopath and his use of the diagnostic machine to be authorized under the same disipline. He treats no patients solely as a chiropractor and considers the form completed by his patients on their first visit, which nowhere thereon refers to specific treatment, to authorize him to treat these patients either as a naturophatic physician or as a chiropractor as he sees fit. The only time he advisees patients he is operating under his naturopathic license is when he writes a prescription. He considers it diff-

icult to draw the line between chiropractic and naturopathic practices except when drugs are dispensed which is always as a naturopath.

He described the pills given to Suzanne as Celoid Salts. One contained sodium sulfate in a vehicle of milk sugar. Others he prescribed for Suzanne contained different salts in a malt sugar vehicle. For the insecticide poisoning the pill was an I-Celoid which contained a mixture of three individual cell salts containing magnesium, sulfur and iron. These pills were not given as placebos, but to reduce the systemic virus and insecticide poisoning diagnosed by use of the biometer. He stressed to Suzanne the necessity for her to believe in the treatment he prescribed in order for it to work.

Dr. Dappolonia identified the instrument he used to diagnose Suzanne's illness as a biometer. He first became interested in"radionics" while a student at the National College in Chicago from which he received degrees in chiropractic and naturopathic. He took post-graduate work at a private school conducted by a Dr. Spitler, N.D. at Eton, Pennsylvania. The institution was a combination of clinic and school with only one instructor.

According to Dr. Dappolonia it is absolutely necessary to have a background in electronics in order to understand the operation of the biometer. The biometer measures the body's resistance, but Dr. Dappolonia was unable to explain whether the resistance was to electrical current or to frequency or how such resistance was electronically measured. According to him all organs and glands give off fixed frequencies. As he explained the theory of the biometer it appears that every heart has a vibrating frequency that is the same regardless of the variations in age, condition, etc. of the patient. When an organ or gland is being tested the machine is set for the frequency applicable to that gland or organ and by finger touch on the black 4" x

4" x 1/3" sensor placed on the body the dial is adjusted so the vibrations are damped out. Any movement of the dials from the standard setting that are necessary to damp out the vibrations represent abnormalities in the organ or gland being tested. In this manner he diagnosed Suzanne Carter initially having 25 million units of infection and subsequently he diagnosed insecticide poisoning.

When asked to draw a schematic diagram showing how the machine converted electrical energy into whatever impulses were transmitted through the 4" x 4" x 1/3" sensor Dr. Dappolonia drew what appeared to be the location of the knobs on the face of the instrument. This drawing is attached to the record as an unmarked exhibit. Its admission was objected to by Dr. Dappolonia and it was never accepted into evidence although no ruling was made on the objection at the hearing. This exhibit is now admitted as evidence of Dr. Dappolonia's understanding of electronics.

CONCLUSIONS OF LAW

From the foregoing it is concluded that Michael Dappolonia, D.C.,N.D. used deceit, deception and fraud in the diagnosis and treatment of Suzanne Carter in May and June of 1975. He held himself out as a chiropractor and Mrs. Carter took her daughter to him for chiropractic treatment. The diagnosis made on Suzanne Carter was made by use of an instrument nottaught at a college approved by the Florida State Board of Chiropractic Examiners and the biometer used is incapable of performing the functions tauted by Dr. Dappolonia. Such conduct constitutes a violation of § 460.13(3)(h) and (n) F.S.

Dr. Doppolonia's contention that prescribing medication he was acting as a naturopathic physician has merit as there was no dispute that he identified himself as a naturopath while prescribing medication or drugs. It is therefore concluded that Dr. Michael

Dappolonia, D.C.,N.D. is not guilty of Charge 2 of the Administrative Complaint.

His contention that his use of the biometer was done only under the naturopathic discipline is inconsistent with his testimony that the only real distinction in the practice of the two disciplines is in the prescribing of medication; and with his testimony that, regardless for what purpose patients appeared, he treated them using whichever discipline he considered appropriate for his diagnosis. A practitioner who labels himself a chiropractor, holds himself out as a chiropractor to the general public, receives patients who come to him for chiropractic treatment, and does not disclose he is treating his patients with another discipline must be presumed to be a chiropractor and operating under the chiropractic discipline while treating patients so received.

Dr. Dappolonia is a charlatan. He cannot obtain patients by virtue of his license to practice chiropractic and then ignore the disciplines of the profession without violating the provisions of Chapter 460 F.S. When he so uses his license such conduct is most reprehensible and the perpetrator should be permanently curtailed. It is therefore,

RECOMMENDED that the Chiropractic License No. 865 issued to Michael Dappolonia, D.C.,N.D. be revoked.

DONE nad ENTERED the 16th day of April, 1976, in Tallahassee, Florida.

s/ K. N. Ayers
K.N. AYERS
Hearing Officer
Division of Administrative Hearings
Room 530, Carlton Building
Tallahassee, Florida 32301

Appendix B

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: The revocation or suspension of the license of MICHAEL DAPPOLONIA, D. C., License No. 865

DOCKET NO. 75-1642

RECOMMENDED ORDER

A public hearing was held in the above-captioned case, after due notice to the parties, at Winter Park, Florida on Monday, January 26, 1976.

APPEARANCES

RONALD LaFACE, ESQUIRE
P.O. Box 1752
Tallahassee, Florida 32302

For the State Board of
Chiropractic Examiners

JOHN W. BOWEN, ESQUIRE
P.O. Box 305
Orlando, Florida 32802

For Michael Dappolonia

ISSUES PRESENTED

Whehter or not licensee engaged in unauthorized practices in using a diagnostic instrument, the use of which is not taught in the regular course of instruction in a college recognized by the Florida State Board of Chiropractic Examiners in violation of Rule 21D-1.01 FAC and whether or not Michael Dappolonia was guilty of violating Florida Statutes Section 460.13 (3) (f),

(h), or (m) in the treatment of Suzzanne Carter in May and June of 1975.

The administrative complaint filed in this action by the Florida State Board of Chiropractic Examiners accused the licensee of treating one Suzzanne Carter between May of 1975 to June, 1975. In the course of his treatment the licensee is accused of using a diagnostic instrument, the use of which is not taught in the regular course of instruction in a college recognized by they Florida State Board of Chiropractic Examiners.

Additionally the licensee in his treatment of Suzzanne Carter is accused of prescribing medication in the form of some pills which were given to aid in the reduction of infection and elimination of the headache of which Suzzanne Carter was complaining. It is alleged that such pills were composed of a Disaccharide or sugar and therfore they could not reasonably be expected to produce the results as indicated. It is alleged that the prescribing of such medication was done by the licensee in his capacity as a licensed chiropractor.

Finally it is alleged that the licensee in using a diagnostic instrument made claims concerning the capabilities of such diagnostic instrument when the licensee knew or should have known that the instrument was incapable of performing as claimed. It is alleged that such claims were made by the licensee in his capacity as a licensed chiropractor.

FINDINGS OF FACT

1. Michael Dappolonia is and was at all times pertinent to this action a Chiropractor licensed by the Florida State Board of Chiropractic Examiners and holds license number 865.

2. Michael Dappolonis is and was at all times pertinent to this action a Naturopath licensed by the Florida State Board of Naurtopathy Examiners and holds license number 548.

3. During the periods from May, 1975 to June, 1975, Dr. Dappolonia treated one Suzzanne Carter who had been brought to him by her mother, Carol Carter. Miss Carter had experienced periods of fainting and blacking out.

4. The treatment of Miss Carter included the use of a diagnostic instrument, similar to a radioclast, which Dr. Dappolonia believed would help him determine the nature of a patient's problem and assist him in determining what types of medication might be useful in treating the problem.

5. As part of the treatment of Suzzanne Carter, Dr. Dappolonia prescribed a medication for Miss Carter to take to aid in the reduction of infection and elimination of headaches. Dr. Dappolonia informed Miss Carter that the only way that the pills would be able to help her was that if she believed the they would help her.

6. The treatment by Dr. Dappolonia druing the time indicated was unsuccessful in that she continued to and still experiences periods of fainting and blacking out.

7. Prior to and subsequent to being treated by Dr. Dappolonia for the periods of fainting and blacking out, Suzzanne Carter was treated by Dr. Gary Miller, a licensed medical doctor.

8. Dr. Miller was unable to determine the causes of the periods of fainting and blacking out and was unsuccessful in treating such symtoms in that they continued to exist.

9. The treatment of Suzzanne Carter by Dr. Dappolonia occured at the Na Pier

Clinic located at 1913 North Orange Avenue, Orlando, Florida, 32804. At the entrance to the clinic it is indicated that Dr. Dappolonia is both a doctor of Chiropractic and medical naturopathy.

10. Miss Carter and her mother knew or should have known that Dr. Dappolonia was authorized to and did use both the principles of chiropractic and naturopathy in the examination, diagnosis, and treatment of persons coming to the Na Pier Clinic.

11. Neither Suzzanne Carter nor her mother instructed Dr. Dappolonia to use only the principles of chiropractic when treating Suzzanne Carter.

12. When using the diagnostic instrument Dr. Dappolonia is doing so in his capacity as a licensed Naturopath.

13. When prescribing medication to Suzanne Carter, Dr. Dappolonia was doing so in his capacity as a licensed Naturopath.

CONCLUSIONS OF LAW

1. The Florida State Board of Chiropractic Examiners seeks to discipline Michael Dappolonia as a licensed chiropractor for using a diagnostic instrument, the use of which is not taught in the regular course of instruction in a college recognized by the Florida State Board of Chiropractic Examiners. The use of such a diagnostic instrument is prescribed by Rule 21D-1.01, FAC. As an indisputable element of establishing the violation of the cited rule the State Board would have to show that it has adopted a list of colleges which it recognizes for the purposes of this rule. Such a list would fall within the definition of a "rule" as found in Florida Statutes Section 120.52 (14) which states that a

> "... 'rule' means each agency statement of general applicability that implements, interprets, or pro-

scribes law or policy, ..."
The adoption of a list of colleges recognized by the State Board would be implementing Rule 21D-1.01 and as such would itself be a "rule". Such a "rule" would have to be adopted pursuant to the provisions of the Administrative Procedure Act and published in the Florida Administrative Code. Without such a validly adopted rule implementing Chapter 21D-1.01 there could not be a violation of that rule (21D-1.01) as would justify disciplinary action against a licensee.

The State Board failed to show that they had adopted any such colleges or colleges recognized by the State Board. Additionally a review of the Florida Administrative Code fails to indicate the publication of any such "rule" which sets forth the list of colleges recognized by the Florida State Board of Chiropractic Examiners. The conclusion is that there is no list of colleges recognized by the State Board which has been validly adopted and published. Lacking any such implementing rule it is therfore impossible to show a violation of Chapter 21D-1.01. The State Board therefore failed to show that the licensee used a

> ". . . diagnostic instrument . . . the use of which is not taught in the regular course of instruction in a college recognized by the Florida State Board of Chiropractic (Emphasis Added)

2. The State Board accuses the licensee of prescribing medication and using a diagnostic instrument in such a manner as to be a violation of Florida Statutes Section 460.13 (3) (f) (h) (m). Those sections read as follows:

> (f) making any untrue, false, fraudulent, misleading, deceptive, extravagant or grossly improbable claims or statements concerning the science or or practice of chiropractic;

> (h) that he is in any way guilty of any deception, misrepresentation or fraud in the practice of chiropractic;
>
> (m) that he is guilty of unprofessional conduct which is defined to mean: Any conduct which is reasonably likely to deceive or defraud the public; share an office space with any person illegally practicing any of the healing arts; the employing either directly or indirectly of any unlicensed chiropractic physician whose license has suspended; or the violation of the Code of Ethics or any provision thereof adopted by the Board.

It is specifically provided in (f) that the statements or claims must be specifically made with respect to the practice of chiropractic. The same specific requirement is found in (h). Subparagraph (m), however, does not expressly state that the proscribed conduct be with respect to the practice of chiropractic. Nevertheless that subsection must be interpreted as applying only to the practice of chiropractic as the State Board has no jurisdiction to discipline licensees unless they are engaging in an activity as a chiropractor. It is therefore required that in order to show a violation of any of the listed subsections, the complained of activity must have been in the capacity of a chiropractor.

The testimony fails to establish that in prescribing the medication or using the diagnostic instrument Dr. Dappolonia was acting as a chiropractor. The testimony and evidence does show that Dr. Dappolonia was treating Suzzanne Carter in his capacity as a naturopath when he prescribed medication and utilized the diagnostic instrument. Having failed to show that the complained of activities were in his capacity as a licensed chiropractor, the State Board is without authority to impose any sanctions on Dr.

Dappolonia.

3. The State Board's authority for proceeding agianst Dr. Dappolonia is found in Florida Statutes Chapter 460 which governs the practice of chiropractic in the State of Florida. Under Section 460.11 (2) a chiropractor is authorized, inter alia, to do the following:

> (a) examine, analyze and diagnose the human living body and its diseased by the use of any physical, chemical, electrical, or thermal method, and use the X ray for diagnosing and may use any other general method of examination for diagnosis and analysis taught in any school of chiropractic recognized and approved by the Florida State Board of Chiropractic Examiners. (b) chiropractic physicians may adjust, manipulate, or treat the human body by manual, mechanical, electrical or natural methods, or by the use of physical means. physiotherapy (including light, heat, water or exercise) or by the oral administration of food and food concentrates, food extracts, and may apply first aid and hygiene, but chiropractic physicians are expressly prohibited from prescribing or administering to any person any medicine or drug or from performing any surgery except as hereinabove stated or from practicing obstetrics. (Emphasis Added)

There is nothing in Chapter 460 which prohibits a licensed chiropractor to be licensed in any of the other methods or sciences of healing regulated by the State of Florida.

The Legislature has in fact recognized that chiropractors may be licensed in any other method or science of healing in the state by their adiption of specific exemtions from Chapter 460. Section 460.24 reads as follows:

> "460.24 CHAPTER NOT APPLICABLE TO OTHER HEALING PRACTICES. -- mothing in this chapter shallbe construed to apply to or in any manner interfere with any other method or science of healing in this state, the person practicing such other method or science of healing having been theretofore licensed to so practice under any law of this state."

Additionally Section 460.262 provides that Chapter 460:

> " . . . shall not be construed to apply to:
> (a) any physician of medicine, known as M.D., Osteopath, Podiatrist, Naturopath, Optometrist, Nurse, Pharmacist, Dentist or Mid-wife who are duly licensed by their respective state boards, and are practicing their professions within the purview of the statutes applicable to their respective profession;" (Emphasis Added)

The question therefore is whether or not Dr. Dappolonia was acting as a Naturopath when he was using a diagnostic instrument or prescribing medication. If Dr. Dappolonia was acting as a Naturopath then both of the above quoted exceptions would apply and there could be no violation of any provision of the Chapter relating to the practice of chiropractic.

The practice of natureopathy is defined in Florida Statutes Section 462.01 as follows:

> "For the purpose of this law natureopathy and naturopathy shall be construed as synonymous terms and are hereby defined to mean the use and practice of psychological, mechanical, and material health sciences to aid in purifying, cleansing and normal-

izing human tissues for the preservation or restoration of health, according to the fundamental principle of anatomy, physiology and applied psychology, as may be required. Naturopathic practice employs, among other agencies phytotherapy, dietetics, psychotherapy, suggestotherapy, hydrotherapy, zonetherapy, biochemistry, external applications, electrotherapy, mechanotherapy, mechanical and electrical appliances, hygiene, first aid, sanitation and heliotherapy;provided, however, that nothing in this chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to practice materia medica or surgery or chiropractic, nor shall the provisions of this law in any manner apply to or affect the practice of osteopathy, chiropractic, Christian Science, or any other treatment authorized and provided for by law for the cure or prevention of disease and ailments."

Even the testimony of the chiropractor testifying on behalf of the State Board indicated that the complained of activities would be within the purview of the practice of naturopathy as defined by Florida Statutes. Dr. Dappolonia testified that he was treating Miss Carter in his capacity as a licensed Naturopath when prescribing medication and using the diagnostic instrument. There is no evidence to indicate that he was doing these things as a chiropractor. The only connection is that he was a licensed chiropractor as well as a licensed naturopath.

Even if there were a question left as to whether or not Dr. Dappolonia was acting as a chiropractor as opposed to a naturopath, it must be concluded that he was acting as a naturopath. When two constructions are possible, one classifying conduct as illegal

and the other classifying conduct as legal, then the latter must be assumed.

Having concluded both in fact and in law that Dr. Dappolonia was acting in his capacity as a naturopath and not a chiropractor when prescribing medication and utilizing a diagnostic machine, the two exceptions specifically exempt him from any disciplimary proceeding by the State Board of Chiropractic Examiners under Chapter 460.

RECOMMENDED ORDER

In view of the lack of any evidence indicating that the complained of activities on the part of Dr. Dappolonia were done in his capacity as a chiropractor and in view of the specific exemptions cited above it is hereby recommended that the charges filed against the license of Michael Dappolonia, the same being license number 865, which charges were filed by the Florida State Board of Chiropractic Examiners on the 2nd day of September, 1975 be dismissed as unfounded and not within the jurisdiction of the State Board of Chiropractic Examiners.

DONE AND ENTERED this ____day of_____, 1976. in Tallahassee, Florida.

_____
K. N. AYERS, Hearing Officer
Division of Administrative Hearings
Room 101, Collins Building
Tallahassee, Florida 32304

Copies to:

Ronald LaFace, Esq.
P.O. Box 1752
Tallahassee,
Florida 32303

John W. Bowen, Esq.
P.O. Box 305
Orlando, Florida
32802

Appendix C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1977

MICHAEL DAPPOLONIA)
)
Petitioner,)
)
v.)
) CASE NO. 76-1757
BOARD OF CHIROPRACTIC)
EXAMINERS OF THE STATE OF)
FLORIDA,)
)
Respondent.)

Decision filed April 7, 1977

Petition for Writ of Certiorari to the Board of Chiropractic Examiners.

John W. Bowen of Rowland, Petruska, Bowen and McDonald, Orlando, for petitioner

Robert L. Shevin, Attorney General, and Carol L. Reilly, Assistant Attorney General, Tallahassee, for respondent.

PER CURIAM.

Petition for Writ of Certiorari is hereby DENIED.

DOWNEY, ANSTEAD AND LETTS. JJ., concur.

Appendix D

SUPREME COURT OF FLORIDA

FRIDAY, SEPTEMBER 23, 1977

MICHAEL DAPPOLONIA,)
)
Petitioner,) CASE NO. 51,819
)
v.) DISTRICT COURT OF APPEAL,
) FOURTH DISTRICT
BOARD OF CHIROPRACTIC)
EXAMINERS OF THE STATE)
OF FLORIDA,) DCA CASE NO. 76-1757
)
Respondent.)

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ADKINS, SUNBERG, HATCHETT and KARL, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

sg
cc: Honorable Clyde L. Heath, Clerk

Messrs. Rowland, Petruska, Bowen & McDonald
Honorable Charles S. Ruberg

Appendix E

IN THE DISTRICT COURT OF APPEALS, FOURTH DISTRICT

MICHAEL DAPPALONIA Petitioner, v. BOARD OF CHIROPRACTIC EXAMINERS OF THE STATE OF FLORIDA Respondent.	)	Case No. 76-1757

NOTICE OF APPEAL TO
THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Petitioner, Michael Dappolonia hereby appeals to the Supreme Court of the United States from the final judgment, decision and opinion of the District Court of Appeal of Florida, Fourth District, Affirming the final order adopted by the Respondent Board, said final judgment became final upon the denial of a Petition for Rehearing which denial occurred on the 25th day of May, 1977; and Petitioner's petition for certiorari to the Florida Supreme Court having been denied on September 23, 1977.

This appeal is taken pursuant to 28 USC, 1257 (2).

All parties to this action are called upon to take Notice of this appeal.

s/ J. Michael Carter
J. Michael Carter
Attorney for Petitioner
P.O. Box 566

Crawfordville, Florida
32327
(904) 926-3647

CERTIFICATE OF SERVICE

I, J. Michael Carter, a member of the Bar of the Supreme Court of the United States, hereby certify that on the 20th day of October, 1977, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United State on Respondent, Board of Chiropractic Examiners of the State of Florida by mailing copies in duly addressed envelopes, with first class postage prepaid, to its attorneys of record as follows: Robert Shevin, Attorney General, and Carol L. Reilly, Assistant Attorney General, Tallahassee, Florida.

s/ J. Michael Carter
J. Michael Carter
Attorney for Petitioner